IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5991 OF 1996

Tejram Dayanand Kothari Petitioners

Vs.

M/s. Deepak Travels & Anr. Respondents

Mr. N. M. Ganguli, advocate for petitioner.

CORAM: Smt. NISHITA MHATRE, J.

DATE : OCTOBER 24, 2007.

PC :

1. This petition challanges the orders passed by the Industrial Court in Complaint (ULP) No. 203 of 1995 in August 1996. The Industrial Court has held that the petitioner would be entitled to get the relief in the complaint only after this Court decides Writ Petition No. 3179 of 1995. The Industrial Court further held that during pendency of the aforesaid Writ Petition, there would be no unfair labour practice on the part of the respondent.

2. The facts giving rise to the present petition are as follows-

3. The petitioner was employed with the respondent from 1st April 1970 as a peon. His services were orally terminated on 16th May 1988. The petitioner raised an industrial dispute which was referred for adjudication before the Labour Court by way of Ref.(IDA) No. 555 of 1990. By an award dated 10th October 1994 the Labour Court answered the reference by directing the respondent to reinstate the petitioner in service with continuity and full back wages from 27th April 1989 till the date of reinstatement.

4. The award was published on 3rd December 1994. Since the respondent failed to comply with the award, the petitioner called upon the respondent by letter dated 29th December 1994 to implement the award.

5. The first respondent challenged the award by filing Writ Petition No. 3179 of 1995 in this Court. While admitting the Writ Petition on 13th October 1995, Rule was restricted only to the back wages payable to the petitioner. This was because a statement was made before this Court that the respondent herein had already reinstated the

petitioner. This Court had also directed the respondent herein to deposit the back-wages in this Court and liberty was granted to the petitioner to withdraw the back-wages. LPA No. 159 of 1995 filed by the first respondent was dismissed on 12th January 1996. It appears that respondent No.1 deposited an amount of Rs.60,000/- in this Court, out of which Rs.30,000/- was paid to the petitioner herein in accordance with the interim order passed by this Court.

6. In the present petition, the petitioner has contended that the respondent has not implemented the award of 10th October 1994. Although the petitioner was called to resume duty, he was offered work as a sweeper and not as a peon in which post he was working prior to the termination of his services. According to the petitioner, this was not a proper implementation of the award, which directed reinstatement of the petitioner in service. The Industrial Court has at one stage held that there could not be any unfair labour practice and that the petitioner had not proved that he was deprived of his job and back-wages. However, in another case, the Industrial Court has held that it could not pass any direction in

regard to commission of unfair labour practice under Item 9 of Schedule IV, in view of pendency of Writ Petition No. 3179 of 1995 in this Court. However, in the operative portion, the Industrial Court has observed thus-

> " (1) The complainant will be entitled to get the relief as per the High Court order in Writ Petition No. 3179/95.
>
> (2) It is hereby declared that during the pendency of the Writ Petition No. 3179/95, there is no unfair labour practices on the part of the respondents.
>
> (3) The complaint of the complainant is hereby disposed of.
>
> (4) No order as to costs."

7. Writ Petition No. 3179 of 1995 was dismissed for default on 28th March 2005. No application has been made to restore that petition. Thus, the award in Ref.(IDA) No. 555 of 1990 has become final.

8. The petitioner in his complaint has stated that he called upon the respondent to implement the award by his letter dated 29th December 1994. However, the respondent instead of reinstating him in service, offered him a job as a sweeper. In my view, if the workman was working as a peon, he ought to have been reinstated as a peon and not as a sweeper. The award in Ref. (IDA) No. 555 of 1990 indicates that the petitioner was working as a peon. This has not been disputed by the respondent in its written statement in the Reference, nor in the written statement filed in Complaint (ULP) No. 203 of 1995 i.e. the complaint in which the impugned order has been passed. In these circumstances, it must be held that the respondent has committed an unfair labour practice by not implementing the award in Ref.(IDA) No. 555 of 1990, which was published on 3rd December 1994.

9. The Writ Petition is allowed with costs. Rule made absolute with costs.

10. The petitioner may withdraw the amount, which has been deposited by the respondent herein in Writ Petition No. 3179 of 1995, together with

accrued interest, if any.

Sd/-
(Smt. NISHITA MHATRE, J.)